

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
WINC, INC., et al., Case No. 22-11238(LSS)
(Jointly Administered)
824 Market Street
Debtors. Wilmington, Delaware 19801
Thursday, December 22, 2022
10:01 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Item 1: Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Determining that the Prepetition Secured Lender is Adequately Protected; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief [D.I. 14; 12/2/22]

Court's Ruling

Agenda

Item 2: Debtors' Motion for Entry of (A) an Order (I) Approving Bidding Procedures in Connection with the Sale of the Debtors' Assets and Related Bid Protections, (II) Approving Form and Manner of Notice, (III) Scheduling Auction and Sale Hearing, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) an Order (I) Approving Purchase Agreements, and (II) Authorizing a Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests [D.I. 47; 12/7/22]

Court's Ruling

EXHIBITSDECLARATIONSPAGE

1) Declaration of Morgan Ley

Transcriptionist's Certificate

1 (Proceedings commenced at 10:01 a.m.)

2 THE COURT: Please be seated.

3 MS. MIELKE: Your Honor, good morning.

4 THE COURT: Good morning.

5 MS. MIELKE: Allison Mielke with Young Conaway on
6 behalf of the debtors. First, I apologize, I have a cold,
7 I'm not feeling great. So I will probably have some cough
8 drops while I speak, if that's okay.

9 THE COURT: Uh-huh.

10 MS. MIELKE: Further apologies, I know we filed a
11 lot on the docket this morning very close to the hearing.
12 I've got some blacklines of the bid procedures pleadings, if
13 that would be helpful, but, if not, I'm happy to just get
14 going.

15 THE COURT: I have everything that was filed this
16 morning.

17 MS. MIELKE: Great. Thank you.

18 THE COURT: Thank you.

19 MS. MIELKE: All right. First, Your Honor, thanks
20 for the time today.

21 I'm happy to report that we are here before you on
22 a fully consensual basis this morning, although it did take a
23 Herculean effort to get us here. We've been working around
24 the clock about the last 24 hours to resolve some issues that
25 the committee had and to make sure that everybody was rowing

1 in the same direction. So I think that what we're presenting
2 to you today you'll find is fully consensual at this time.

3 We will be -- not to bury the lead, but we'll be
4 adjourning this hearing with respect to the DIP on a final
5 basis to the hearing on January 6th, and we have submitted a
6 form interim order under certification of counsel this
7 morning. Did Your Honor have questions about that order?

8 THE COURT: Let me take a look at that one. I
9 didn't focus on that one.

10 (Pause)

11 THE COURT: I don't have any questions on that.
12 This is consensual?

13 MS. MIELKE: It is, Your Honor. It just extends
14 the period -- or the milestone to enter a final DIP order and
15 it increases the DIP draw by one and a half million so that
16 we can get through the interim period.

17 THE COURT: Okay, very good.

18 Does anyone wish to be heard on that?

19 (No verbal response)

20 THE COURT: Okay, we will --

21 MR. LITVAK: Your Honor --

22 THE COURT: Oh --

23 MR. LITVAK: -- it's Max Litvak for --

24 THE COURT: -- Mr. Litvak.

25 MR. LITVAK: -- Banc of California, if I may be

1 heard for a moment?

2 THE COURT: Yes.

3 MR. LITVAK: Good morning, Your Honor, Max Litvak,
4 Pachulski Stang Ziehl & Jones on behalf of Banc of
5 California. I just wanted to say, Your Honor, that we're
6 supportive of the continuance of the final DIP hearing, and
7 we've also reviewed the budget. There's an updated budget
8 that was filed as part of that notice and the bank is okay
9 with that as well. It stays at the \$5 million ultimate
10 maximum DIP loan amount, so we're comfortable with it. I
11 just want to make that clear on the record.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Anyone else? Come to the podium, please.

15 MR. KESSELMAN: Good morning, Your Honor, Justin
16 Kesselman of ArentFox Schiff on behalf of the committee.

17 THE COURT: Mr. Kesselman.

18 MR. KESSELMAN: With respect to the interim DIP
19 order and the adjournment of the final DIP to January 6th,
20 the committee is obviously supportive of entering the order
21 and gratified to reach an interim solution that does, at
22 least until January 6th, resolve some of the committee's
23 issues that were put into its objection, including some
24 increased oversight over the outflow of cash on account of
25 prepetition claims. That is a concern for the committee to

1 make sure that this is an administratively-solvent estate, as
2 we highlighted in our objection. That is still, obviously, a
3 concern and will continue to be a concern. The committee
4 will be monitoring that and is going to be in continued
5 discussions with the professionals of the debtor, but
6 appreciates everyone's efforts, including the professionals
7 of the debtor and the lenders to reach an interim solution
8 for today through January 6th.

9 THE COURT: Okay. Thank you.

10 MR. KESSELMAN: Thank you, Your Honor.

11 THE COURT: And I did read the committee's
12 objection. I understand the concerns and which ones have
13 been resolved and which ones are still outstanding from this
14 interim resolution.

15 MR. KESSELMAN: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Anyone else?

18 (No verbal response)

19 THE COURT: Okay. Well, I will sign this order;
20 we'll get it on the docket today.

21 MS. MIELKE: Thank you, Your Honor. We have
22 uploaded it, so it is available --

23 THE COURT: Thank you.

24 MS. MIELKE: -- for your convenience.

25 So I'll dive into kind of the main event for

1 today, Your Honor. First off, just if it's all right, I'll
2 just kind of give a brief overview of events that have
3 transpired since we last met, and then kind of go over our
4 order of operations.

5 First, if I may, I'll introduce some people that
6 are in the courtroom with us. Debtors' CFO Carol Brault --

7 THE COURT: Yes.

8 MS. MIELKE: -- is with us in the courtroom, Kevin
9 Pleines from RPA Advisors next to her with -- that's the
10 debtors' financial adviser. Morgan Ley Canaccord Genuity and
11 Brian Hurley with Canaccord Genuity, the debtors' investment
12 banker, is also here as well.

13 As I mentioned, we've been in the trenches in the
14 last 24 hours to help, you know, the committee with some of
15 its information issues and some other issues that it has
16 raised. We believe that the resolutions that we've entered
17 today -- or that we've, you know, agreed on today will
18 provide the committee with additional time to get up to speed
19 and to understand -- lift up the hood, as you will.

20 The parties have agreed on a revised form of bid
21 procedures and order, which we filed this morning. We also
22 filed a revised APA this morning, as well as the declaration
23 of Morgan Ley in support of those bid procedures.

24 We submit this declaration -- Your Honor, as I
25 mentioned, Mr. Ley is in the courtroom today -- we submit

1 this declaration for the Court's consideration and ask that
2 it be moved into evidence to support the Court's approval of
3 the bid procedures and the procedures order.

4 THE COURT: Does anyone object?

5 (No verbal response)

6 THE COURT: I hear no objections. It's admitted
7 and I did read it this morning.

8 (Ley declaration received in evidence)

9 MS. MIELKE: Thank you.

10 As you'll recall, we filed the bid procedures
11 motions in this case shortly after the first day hearing, at
12 which we recounted the debtors' significant prepetition
13 marketing efforts, which I'll briefly address again in a
14 moment.

15 Those -- upon filing of the Chapter 11 cases, the
16 parties were -- by the parties, I mean the stalking horse
17 bidder and the debtors -- were engaged in active negotiations
18 on a stalking horse APA. In parallel, they were negotiating
19 the DIP financing in order to get through a sale process, as
20 well as the terms of the APA. That was executed the day
21 after the first day hearing, it was filed on the docket, and
22 then this -- the hearing was scheduled approximately 14 days
23 later.

24 During the period between filing the APA and
25 today, there were two primary work streams that the debtors

1 have been engaging. The first is that, on a post-petition
2 basis, Canaccord immediately reinitiated its marketing
3 efforts. I think you probably recall that we mentioned the
4 prepetition marketing efforts in this case began
5 approximately nine months ago with the retention of Canaccord
6 in March. They started that prepetition process, reached out
7 to approximately 50 parties prepetition, and engaged in a
8 fulsome process. It eventually led to a couple of interested
9 parties, only one was able to provide financing, which was a
10 requirement for the debtors to move forward, and that's how
11 we landed with the stalking horse bidder.

12 Once the cases were filed, Canaccord went back out
13 to the market. They sent out additional information to some
14 50 parties, I think, a lot of some of the similar parties
15 that were engaged prepetition. We did make contact with
16 numerous individuals who have had opportunities to interact
17 with management, have interviews with management. There are
18 25 parties that are under NDA that have been doing diligence
19 and -- on the debtors and that have access to a confidential
20 data room.

21 So far, we can report that no party has asked for
22 additional time or has noted that additional time is needed
23 in order to get bids in on time.

24 The second piece of the work stream has been the
25 disclosure schedules with the asset purchase agreement. So,

1 as part of the APA that was executed on the 7th, the parties
2 had a structure where they would -- given the timing, they
3 would do some diligence, the debtors in particular would do
4 diligence, populate schedules, get it over to the stalking
5 horse bidder. There would be agreement on the schedules, and
6 then those would be agreed upon and be binding as part of the
7 asset purchase agreement.

8 So, initially, when the APA -- and I'll just back
9 up briefly, just for some context -- initially, when the
10 parties were negotiating the APA, the deal was structured as
11 a pure asset sale, but it became very clear that there was
12 going to be some licensing issues in terms of how quickly the
13 debtor could be able to transition the business and be able
14 to have the licenses it needed to operate on day one.

15 And so the parties pivoted to a hybrid equity
16 assert transaction where the stalking horse bidder agreed to
17 purchase the equity in BWSC, which is the entity that holds
18 the licenses for the debtors' operations, the wine licenses,
19 and then would purchase certain assets from Winc,
20 Incorporated and Winc Lost Poet, Incorporated, which are the
21 other two debtors in this case.

22 All of the sales and a substantial amount of the
23 obligations of the debtors run through BWSC and part of that
24 -- it's predominantly because the BWSC, I think, has the
25 licenses and so all sales have to be done at that entity.

1 While going through the disclosure schedules and
2 doing that diligence exercise, it became clear -- there was a
3 particular obligation that was substantial and it was
4 originally booked, and had historically been booked on the
5 books and records of Winc, Inc. And so it was not -- while
6 it was made, you know, available, that information, it wasn't
7 clear that that was a liability of BWSC kind of at the
8 outset.

9 When it became very clear that -- and that was an
10 issue that needed to be addressed, the stalking horse bidder
11 did attempt to negotiate that agreement with the
12 counterparty, but were unable to resolve an economic solution
13 that was feasible for the transaction. And so they came to
14 us and we pivoted to -- back to the asset purchase structure
15 that we had originally negotiated.

16 So what that means is that we've executed an
17 amended APA, we filed that this morning. The disclosure
18 schedules that we are finalizing as well, those were done
19 this morning as well.

20 And, functionally, what it means is that the
21 assets of both -- or all three of the debtors will be
22 purchased in the sale and substantial liabilities will be
23 assumed as well.

24 The stalking horse bidder is contemplating
25 assuming, you know, a lot -- substantial amounts of the

1 operational liabilities, including a lot of the sort of
2 operational software licensing-type agreements, subject to
3 the consent of those counterparties, as well as sort of major
4 contracts, and will likely take almost all, if not all, of
5 the debtors' employees as well.

6 So we believe that this structure continues to
7 provide substantial value for the debtors' estates and
8 continues to be the best way to maximize value of the estates
9 and to move forward.

10 The other component of that, Your Honor, is that
11 we're cognizant that this is a type of case the budget is
12 tight. The stalking horse bidder is aware kind of its
13 obligations to pay the freight of the case, and so we have
14 also negotiated a further increase of the purchase price of a
15 million dollars to help satisfy those liabilities and in --
16 you know, as consideration for sort of the revised asset
17 purchase agreement structure.

18 Turning to the sale timeline, Your Honor, as we've
19 -- as I mentioned and we've kind of hit on this substantially
20 in the first day hearing as well, the prepetition marketing
21 process in this case was substantial and we think that the
22 sale timeline as contemplated hits the right balance between
23 providing a comprehensive and competitive auction process
24 that hopefully maximizes value, but doesn't prolong the
25 process such that it would, you know, unnecessarily create

1 substantial administrative costs that the company can't
2 afford and that would not be value-maximizing.

3 The -- I don't need to read it for Your Honor, but
4 we're contemplating just some -- you know, high-level dates.
5 The bid deadline of January 9th, with an auction on the 11th
6 and a sale hearing on the 17th.

7 The bid procedures contemplates break-up fee and
8 expense reimbursement in sort of customary amounts that are
9 market and in line with amounts that this Court has
10 previously approved. As discussed in the Ley declaration,
11 the stalking horse bidder required those two protections in
12 order to act as a stalking horse and to submit its bid to be
13 shopped in the public market.

14 The DIP lender will be credit bidding the amount
15 of the DIP facility. The prepetition lender has confirmed
16 that it is not pursuing a credit bid in these cases, so we've
17 adjusted the documents to reflect that.

18 We did make some conforming non-material changes
19 to the sale notice, just to conform to the documents that we
20 have presented today.

21 And I think that that covers kind of the sort of
22 high-level -- although I'm getting a note -- oh, thank you --
23 so one of the deadlines that we have kind of done away with
24 at this point is the letter of intent deadline. As I'm sure
25 you recall, maybe it's not a traditional structure that we

1 originally proposed, was to include an LOI deadline, you
2 know, test kind of where we were, whether we were getting a
3 lot of interest or not, and then be able to make the call as
4 to whether or not a further auction process would be
5 warranted. You know, in discussions with all the various
6 interested parties here and just given the timing, it just
7 doesn't continue to make sense. So we've removed that from
8 the timeline.

9 So, you know, I don't want to -- I'll turn quickly
10 just to the committee's objection to address it. I don't
11 want to harp on it or, you know, pause too long on their
12 objections. I mean, I think --

13 THE COURT: Is there anything left or is this now
14 consensual?

15 MS. MIELKE: It is consensual, it is consensual.

16 THE COURT: Okay.

17 MS. MIELKE: We strongly disagree with much of
18 what was in that objection and I think I'll leave it at that.
19 The debtors are reserving our rights to address anything that
20 was put in that objection and to, you know, respond to any of
21 the statements that were made in that prior to a final
22 hearing, if needed.

23 We have found a way to move forward in a
24 consensual way. Given the circumstances of this case, given
25 the budget, given, you know, the time frame, we believe

1 strongly that it does not make sense to have contentious
2 battles over, you know, standard case issues that we can come
3 together commercially to resolve. So we're hopeful that that
4 is the way that this case moves forward, I anticipate that it
5 is. We've, over the last 24 hours or so, have worked very
6 commercially with all of the interested parties in this case
7 and were able to ultimately achieve a consensual resolution.

8 So I'll just leave it at that and just note that,
9 you know, the concessions that we've made in order to get to
10 a consensual hearing today are for an interim period only and
11 to provide the committee with transparency and kind of a
12 good-faith effort of, you know, moving along in the same sort
13 of direction.

14 So, Your Honor, I think that's kind of the
15 highlights. I'm happy to get into details, I'm happy to walk
16 through the redline, if that's helpful, but just in terms of
17 kind of highlights -- I know that Your Honor pays very close
18 attention to these documents, so I have no intention of
19 boring you on a holiday week if that's not necessary.

20 THE COURT: I would like to hear from others. The
21 only question that I had -- well, two questions, but on the
22 timeline, I think it was appropriate to do away with the
23 letter of intent deadline, which essentially shortened the
24 bid deadline, but the sale objection deadline is still at
25 December 30th, and I'd like to understand why it's necessary

1 for that deadline to remain at the 30th given that there has
2 been a change to the APA, which does impact creditors of the
3 BWSC, who before when the stock was being taken didn't have
4 to worry about their claims, now that it's not being taken,
5 it impacts them, at the very least, and it's a tight -- as we
6 recognize, it's a tight timeline.

7 So why the necessity for a sale objection deadline
8 that is, what, eight days from now when people aren't going
9 to get the definitive notice that in fact that deadline is
10 real? So far, it's just a proposed deadline.

11 MS. MIELKE: Yeah, you know, I'll just take it as
12 a practical matter, Your Honor. I mean, we've been in
13 contact with all parties that have been interested in these
14 assets, you know, close contact, and so I think the documents
15 have been sent to those parties, they're available in the
16 data room --

17 THE COURT: I'm not concerned about the parties,
18 the bidders; I'm concerned about the creditors --

19 MS. MIELKE: Oh, yeah, I understand.

20 THE COURT: -- the creditors who have to object to
21 a sale.

22 MS. MIELKE: I suppose, Your Honor -- I mean, the
23 reason that we did that deadline on that day is for the LOI.
24 So, you know, if -- it seems like Your Honor is uncomfortable
25 with it, we could push it to the 6th, which would be the last

1 business day before bid deadlines and would give parties
2 another week.

3 THE COURT: And what's the significance of having
4 it before the bid deadline?

5 MS. MIELKE: Well, I think -- I think we'd like to
6 know if there are objections to the sale leading up to the
7 auction.

8 THE COURT: Well, I'm going to -- we're going to
9 make it the 9th. We're in a tight schedule already, it's a
10 holiday season, people are in and out, and I think, if all
11 the bidders know before the actual auction, then they have
12 the lay of the land, and they can take a look and people can
13 adjust whatever needs to be adjusted, but I don't -- I mean,
14 the way this timeline was set up before, people were having
15 to -- bidders, prospective bidders were having to put in a
16 binding letter of intent without knowing sale objections.

17 So I think the 9th is where we're going to land.

18 MS. MIELKE: Yes, Your Honor. We'll make that
19 change and upload a revised order.

20 Did you have any other questions?

21 THE COURT: Well, I do want to hear from others,
22 but the only other question I had in revised paragraph 24 --

23 (Pause)

24 THE COURT: Okay, where it provides that the
25 debtors' obligations under the order, the provisions of this

1 order and the portions of the stalking horse agreement
2 pertaining to bid procedures, including expense
3 reimbursements and break-up fees, shall survive. What other
4 provisions besides the expense reimbursement and break-up fee
5 are contemplated to survive because I am not generally,
6 obviously, approving the asset purchase agreement or any
7 provisions.

8 What I will do, based on consensus and unless I
9 hear anything different, is approve the break-up fee and
10 expense reimbursement as revised, but I'm not generally
11 approving the entry.

12 So what else, what other provisions?

13 MS. MIELKE: With that, Your Honor -- I mean, I
14 haven't given any consideration to specific provisions of
15 this order. If there are other, you know, parties that are
16 concerned about something specific, I'm happy to hear it, but
17 I'm sure that the break-up fee and the expense reimbursement
18 are the primary issues here.

19 THE COURT: Mr. Miller, I think it's your issue.

20 MR. MILLER: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. MILLER: For the record, Curtis Miller of
23 Morris Nichols.

24 Your Honor, if it's limited to -- if we limit the
25 paragraph to the expense reimbursement and break-up fee,

1 that's fine.

2 THE COURT: Okay --

3 MR. MILLER: Thank you.

4 THE COURT: -- then let's do that. Thank you.

5 Okay, let me hear from others, in support of or
6 anyone who has a concern with respect to the revision.

7 MR. KESSELMAN: Good morning, Your Honor --

8 THE COURT: Mr. Kesselman.

9 MR. KESSELMAN: -- Justin Kesselman of ArentFox on
10 behalf of the committee.

11 Although the committee was pleased to reach this
12 interim step, as with the DIP, we continue to have, you know,
13 concerns over the sale generally, including ensuring that the
14 process is adequate to make sure that interested parties
15 understand what the deal is and the timeline and what they're
16 able to accomplish over that timeline, which is why it was
17 important to remove that LOI deadline, also to -- even by one
18 business day, to get the sale notice out and -- but other
19 aspects of this, you know, other parties and interested
20 bidders need to understand what the economic terms of this
21 transaction are as soon as possible.

22 And so the committee was -- is concerned that the
23 transaction has changed multiple times, including, you know,
24 an asset purchase agreement that was signed last night. And
25 there's reference by the debtors and, you know, by the

1 stalking horse that substantial liabilities will be assumed
2 and we have no reason to doubt that, but we really do need to
3 understand the magnitude of the liabilities that will be
4 assumed and potential bidders need to understand the
5 magnitude of liabilities that will be assumed because they
6 need that information to understand whether -- you know, what
7 the magnitude of bid is required to make a qualified bid and
8 top the stalking horse. If that's a substantial number that
9 they need to meet through some combination of cash or
10 additional assumed liabilities, bidders need to know that.

11 And so, you know, we were contacted by an
12 interested party who lost interest in the process earlier,
13 contacted last night, who read our objection and is
14 interested to see the revised bid procedures to get reengaged
15 in the process. And whether we're able to do that and move
16 quickly and get bidders engaged to have a robust auction is
17 yet to be seen, but we're going to work very hard with all
18 the interested parties to try to make that happen. But if we
19 find that potential bidders are disenfranchised or have
20 impediments to the process based on the structure that's
21 imposed, we of course reserve our rights to try to seek more
22 time, if it's prudent in the case, and object to the sale if
23 we don't think it's in the best interests of the estate,
24 including if the sale leaves administrative liabilities at
25 the estate that would leave the estate insolvent, which is,

1 you know, a driving force behind our objection.

2 THE COURT: Okay. Thank you.

3 MR. KESSELMAN: Thank you, Your Honor.

4 THE COURT: Anyone else? Let me get the people in
5 the courtroom first.

6 Mr. Miller.

7 MR. MILLER: Good morning again, Your Honor,
8 Curtis Miller of Morris, Nichols on behalf of the stalking
9 horse bidder and DIP lender.

10 In hearing the comments of committee counsel, the
11 one thing I just do want to remark is today is the day to be
12 raising objections to the bid procedures. So we are
13 resolving that, we've resolved that, so that has passed. If
14 we get to the sale and they have sale objections, that's
15 fine, but we are where we are today, we've agreed to resolve
16 it. We made concessions -- it makes the case more expensive
17 -- we've made concessions, but today is the day for bid
18 procedures objections.

19 So, when we get to the sale hearing, we understand
20 that if they think there's other mischief that's happened,
21 those issues can be raised. You know, there's revised
22 procedures in place to make it a level playing field, you
23 know, give them what they want to be able to talk to
24 creditors, talk to other debtors, that's fine, but today is
25 the day for process objections.

1 So I just wanted to note that for the record.
2 We're not anticipating coming back at the sale hearing and
3 saying the bid procedures were inappropriate, that's being
4 resolved today.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 Let me ask, I think I heard Ms. Mielke say that
8 the disclosure -- Mr. Miller --

9 MR. MILLER: I'm sorry --

10 THE COURT: -- I'm sorry --

11 MR. MILLER: -- I didn't know you were talking to
12 me.

13 THE COURT: Yes. I think I heard Ms. Mielke say
14 that the disclosure schedules to the APA were another focus
15 of what has been worked on and --

16 MR. MILLER: Those --

17 THE COURT: -- are those complete, substantially
18 complete? Where are those?

19 MR. MILLER: Let me ask my co-counsel, Your Honor.

20 THE COURT: Thank you.

21 MS. MIELKE: They are complete, Your Honor. I saw
22 an email this morning go back and forth and we anticipate
23 putting those in the data room as soon as they're ready.

24 THE COURT: Thank you.

25 MR. MILLER: Also, my co-counsel reminds me that

1 one of the things that was negotiated and was revised in the
2 bid procedures is there is a minimum bid, like, amount set
3 forth in the bid procedures.

4 THE COURT: Yes.

5 MR. MILLER: So that -- you know, I think that
6 resolves the clarity point of what do I actually need to bid,
7 that tells people what they need to bid to come in. So I
8 think that resolves that issue, Your Honor.

9 THE COURT: Yes, but that doesn't -- it does, but
10 it doesn't tell us what the assumed liability piece is going
11 to be.

12 MR. MILLER: Agreed. That's where the disclosure
13 schedules come in, as you remarked, Your Honor.

14 THE COURT: Okay. Thank you.

15 MS. MIELKE: The only piece I'll add to that, Your
16 Honor, though, is that they do have to bid against the APA
17 and the schedules will be identified in the data room, and so
18 they will know what contracts are being assumed as part of
19 those schedules. So while they -- sort of the amounts may
20 not be identified, you know, in those schedules, they will
21 have to -- they will know what's included in the APA.

22 THE COURT: Well, that's why I asked if --

23 MS. MIELKE: Yeah, that's right.

24 THE COURT: -- the disclosures were finalized.

25 MS. MIELKE: Yes, Your Honor.

1 THE COURT: And I will note, though everyone, I
2 guess, has to bid against the asset purchase agreement, if
3 somebody else comes in with a totally different structure, a
4 plan, anything else, the debtors, of course, will, consistent
5 with their fiduciary obligations, consider that.

6 Yes?

7 MR. SACCULLO: Your Honor, Anthony Saccullo on
8 behalf of the committee. Very briefly, just to respond to
9 Mr. Miller.

10 First of all, I think we made clear, the structure
11 of this changed last night -- or the day before right from a
12 stock purchase agreement to an asset purchase agreement.
13 We've already heard from one potential bidder who
14 specifically pulled themselves out because it was a stock
15 purchase agreement, who now is saying they will come back in
16 under this form and they may be interested under what all of
17 us are used to seeing, which is a standard asset purchase
18 agreement.

19 So when we say all of the process and procedure is
20 all done, if we, the committee, find out that there are more
21 players who might have been involved in this who were out
22 because this was a stock purchase agreement, we certainly
23 would bring that to the debtors first and we would hope that
24 the debtors would be behind us and say, hey, wait a minute,
25 let's make sure that this is a level playing field and, if

1 not, we may have to come back to this Court and make sure
2 that interested parties have a level playing field here given
3 that structural change.

4 THE COURT: So I have two reactions to that. My
5 first reaction is that, of course, if we find out that
6 there's some changed circumstance or perhaps some
7 misunderstandings -- I'll hear what anybody has to say, but
8 this is the bid procedures and -- but the Court, of course,
9 is free to listen to whatever the circumstances are.

10 Second, what I just said, it surprises me to hear
11 that somebody, a sophisticated purchaser, wouldn't have said
12 I don't care if it's a stock purchase agreement, I'm coming
13 in with an asset purchase agreement because the Bankruptcy
14 Court is going to entertain whatever type of offer in
15 whatever structure it's presented.

16 So I'm a little surprised by that, but we'll deal
17 with that when and if it's an issue. In the meantime, that
18 party has now engaged in some fashion and they will know by
19 the end of today what the result is. And I'm sure Canaccord
20 will be reaching out to them and the committee is already in
21 communication. So I think they'll be brought up to speed
22 pretty quickly.

23 MR. SACCULLO: Your Honor, I completely agree and,
24 actually, you may have said my point better. I'm not
25 standing up to object to the bid procedures, I just want to

1 make sure that everyone is aware there could be a possibility
2 that there are people out there who were sort of turned off
3 by the fact that this is a stock purchase agreement and I
4 think we all have sort of a shared idea that we should be
5 moving forward and making sure everybody has an equal
6 opportunity.

7 THE COURT: Everybody has an equal opportunity.

8 MR. SACCULLO: Thank you, Your Honor.

9 THE COURT: Anyone else in the courtroom?

10 Mr. Litvak.

11 MR. LITVAK: Good morning, Your Honor, Max Litvak
12 on behalf of Banc of California. Your Honor, the bank is
13 also supportive of the revised bid procedures. I just wanted
14 to highlight a couple of things, which is I was very pleased
15 to hear that the purchase price is being increased from \$10
16 million to \$11 million because, as we discussed at the first
17 day hearing, there's a pretty thin equity in this case when
18 you take into account the \$5 million DIP, plus interest, plus
19 fees; you have my client's claim of three and a half million
20 dollars, plus interest, plus fees; you're quickly getting
21 into that \$9 million range, and to have that little cushion
22 to \$11 million is certainly very beneficial and I think will
23 be beneficial in terms of ensuring that administrative claims
24 are paid as well, consistent with the budget.

25 And then the second thing, Your Honor, is we're

1 happy to hear that the ultimate outside date is being held,
2 which is something on the order of January 20th for closing
3 the sale, primarily because, as you can see from the updated
4 budget, the debtors are down to about \$100,000 at that point.
5 So it's very important to, from our perspective, have an open
6 and transparent sale process. Hopefully, there will be
7 overbidding. Certainly, we would like to see overbidding
8 because then that increases that cushion even more and
9 provides potential benefits not only for the secured
10 creditors, but also the unsecured creditors, but that's --
11 you know, that's something that ultimately we're going to
12 have to live with that deadline because, you know, that's --
13 in terms of the financial wherewithal of the estate, that's
14 pretty much it.

15 So we're supportive of the modifications today,
16 Your Honor, and we're looking forward to a robust conclusion
17 to this sale process.

18 Thank you.

19 THE COURT: Thank you. Okay.

20 Well, I'm going to approve the bid procedures and
21 the timeline as modified by the change in the sale objection
22 deadline based on two things: one, the declaration of Mr.
23 Ley, which supports the request for what is, admittedly, an
24 expedited sale process in terms of the post-petition aspect
25 of it, but as was made clear in the declaration, this

1 process, a sale process, started pre-bankruptcy in March of
2 this year.

3 So I think the timeline, as it stands today, is
4 appropriate. And with the concessions that have been made in
5 response to the objection filed by the committee, which
6 expressed concerns that I think were appropriately dealt
7 with, I will approve the bid procedures, as modified.

8 I recognize there's been a change in the structure
9 of the sale, which is one of the reasons that the sale
10 objection deadline has been changed, but I think
11 sophisticated parties can adjust appropriately. There is a
12 reason -- and I was looking for the reason for the change --
13 and there was a reason given for the need to change the
14 structure and that was the earn-out obligation, which
15 apparently was booked at Winc when it should have been booked
16 at BWSC -- or maybe it should have been booked at both, I
17 don't know, but it wasn't booked at BWSC. And so there is a
18 reason for the change.

19 I noted the consideration went up a million
20 dollars, I noted the break-up fee went up proportionately. I
21 don't have an objection to that anymore. Again, I have a
22 basis for the break-up fee in the declaration of Mr. Ley.
23 The stalking horse bidder is the only one that came forward
24 after a long process and made a commitment. The stalking
25 horse bidder's bid is subject to others coming in and topping

1 it. So I think, under the circumstances of this case, it's
2 appropriate and the fees are within the range that this Court
3 approves.

4 Clearly, the process here strikes a balance
5 between necessary marketing and reality of cash balances and
6 position of where the debtor is. So I think it's
7 appropriate. And somebody, probably Ms. Mielke, talked about
8 commercial resolutions and the one that was reached today, I
9 will just add that commercial resolutions are always
10 preferable to judge decision. So I would encourage you to
11 continue to act in that regard.

12 We will look for the updated form of order with
13 the two changes that were discussed and we'll get that signed
14 today. And good luck with the marketing.

15 Anything further?

16 (No verbal response)

17 THE COURT: Thank you. We're adjourned. Happy
18 holidays.

19 COUNSEL: Thank you, Your Honor.

20 (Proceedings concluded at 10:42 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Tracey J. Williams

January 1, 2023

Tracey J. Williams, CET-914

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